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To exclude VCs or not to exclude VCs.

There are many pockets of interest that try to manipulate the SBIR Programs for their own gain - political or otherwise. Consider first why the SBIR Program was created by congress in the first place. The Small Business Innovation Development Act of 1982 was the result of a recommendation of the first White House Conference on Small Business in January 1980. The delegates to this conference voted to recommend the bill that authorized the creation of the SBIR Program. There were several reasons that this piece of legislation found support in the conference and eventually in the Congress. First, evidence suggested that small businesses had been having difficulty obtaining funds in general and had a declining share of federal R&D contracts. Second, several well-publicized studies indicated that small businesses were very important source of job growth, and the recessions of the early 1980s created a supportive climate for any proposal that could claim job creation potential. Third, a successful "SBIR Pilot Project" established by the National Science Foundation demonstrated that the program was feasible.

From the start, Congress had two goals for the SBIR Program. A report of the Senate Committee on Small Business makes this clear:

The purpose of the bill is twofold: to more effectively meet R&D needs brought on by the utilization of small innovative firms (which have been consistently shown to be the most prolific sources of new technologies) and to attract private capital to commercialize the results of the Federal research. (U.S. Congress, 1981, p.1.)

The two primary goals for the program are also clear from the legislation. The 1982 act that created the SBIR Program listed the following objectives of the program:

- (1) to stimulate technological innovation;
- (2) to use small business to meet Federal research and development needs;
- (3) to foster and encourage participation by minority and disadvantaged persons in technological innovation; and
- (4) to increase private sector commercialization of innovations derived from federal research and development. (96 Stat. 217)

The 1982 Act was originally scheduled to expire on 1 October 1988, but during fiscal year 1986, Congress enacted legislation extending the law through September 1993 (99 Stat. 443). In 1992, the SBIR Program was reauthorized. The Small Business Innovation reauthorization Act of 1992 both raised the percentage of research expenditures dedicated to the SBIR Program and increased the

importance of the goal of commercializing SBIR projects. The 1992 act that reauthorized the SBIR Program listed the following objectives of the program:

- (A) expand and improve the program;
- (B) emphasize the program's goal of increasing the private sector's commercialization of technology developed through federal R&D;
- (C) increase small business' participation in federal R&D, and
- (D) improve the federal government's dissemination of information about the program.

The goal of commercialization moved from being listed fourth in 1982 to second in 1992. To exploit certain agendas over the years some groups have argued that these goals are in priority order; others have suggested that these goals should be weighed equally, finally others have argued that each SBIR Program can decide for itself the priority that it can place on each of these goals. This change in 1992 in the ordering of the goals was purposeful and was reflected in important ways by the language describing the selection process after 1992. Specifically, the original language describing Phase I was:

- (A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas submitted pursuant to SBIR program solicitations: (96 Stat. 218).

This language was amended as follows (the added language is underlined and bolded):

- (A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential as described in subparagraph (B)(ii), submitted pursuant to SBIR SBIR program solicitations: (106 Stat. 4250).

For Phase II the change was much more dramatic and purposeful. The original 1982 language was:

- (B) a second phase to further develop the proposed ideas to meet the particular program needs, the awarding of which shall take into consideration the scientific and technical merit and feasibility evidenced by the first phase and where two or more proposals are evaluated as being of approximately equal scientific and technical merit and feasibility, special consideration shall be given to those proposals that have demonstrated third phase, non-Federal capital commitments; (96 Stat. 218)

This language was changed in 1992 to read:

- (B) a second phase, to further develop proposal which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposal as evidenced by the first phase considering, among other things, the proposal's commercial potential, as evidenced by:

- (i) the small business concern's record of successfully commercializing SBIR or other research;
- (ii) the existence of second phase funding commitments from private sector or non-SBIR funding sources;
- (iii) the existence of third phase, follow-on commitments for the subject of the research; and
- (iv) the presence of other indicators of the commercial potential of the idea. (106 Stat. 4251)

These are clear and obvious mandates from the Congress to change the selection processes by increasing the importance of private sector commercial potential. Under the 1982 legislation, ties between projects deemed to be of equal scientific and technical merit could be broken in favor of projects that were more likely to be commercially successful. The likelihood of commercialization was clearly a secondary concern. This aspect of the SBIR Program was very purposefully changed by the Congress with the 1992 legislation, which placed commercialization on an equal footing with scientific and technical merit.

More recently the Small Business Reauthorization Act of 2000 (P.L. 106-554) did not provide any changes to the wording as provided in the 1992 reauthorization. During the process of reauthorization, the Congress had an obvious opportunity to make any legislative changes that it felt were necessary and alter any goals that it felt were pertinent to the success of the overall program. Among other things that the 2000 reauthorization act accomplished, it did extend the SBIR Program until 30 September 2008. However, there were no substantive changes to any of the SBIR Program goals as amended in the 1992 reauthorization act. Therefore, the congressional emphasis on private-sector commercialization continues to be the primary goal for the SBIR Program and its implementation by the government should reflect that emphasis. Additionally, Executive Order 13329 - "Encouraging Innovation in Manufacturing" focuses on the private-sector and its ability to manufacture technology. The federal government is not a manufacturing agent but does rely on private-sector sources to fulfill its manufacturing needs. Executive Order 13329 requires that every SBIR Program place a "high-priority" on manufacturing related topics and awards. The emphasis of this EO is specifically focused on innovations that influence advancements in the private-sector marketplace and not within the federal government. However, nothing has yet been established to hold the SBIR Programs accountable to the tenets of the Executive Order. There are continued indications from Congress that the SBIR Program needs to be brought back and focused on the ability of the small high-tech business community to respond to the dynamics of the marketplace. The viability of new technologies and innovations can best be tested by what the private-sector is willing to buy and will push innovations to market far quicker than a large prime contractor or a government acquisition program. If Congress will restate the goals of the SBIR Program, in a priority order, and unequivocally state that the goal on the SBIR Program is to foster technological innovations for the private-sector market, then changes will be instituted which will push government acquisition programs away from driving the program toward incremental advances for activities that are already being addressed in support of the current mainline RDT&E Program. So should companies that are astute enough and mature enough to succeed in the commercial market place by seeking funding from other sources such as a VC be excluded from participation, especially when that involvement with a VC firm means that the company principals relinquish ownership of that company? When is the government ever in a position to know when it is in the best business-interest of a particular company to become backed or sponsored by a VC entity? The SBIR Program cannot and should not try to fix the "problems" that exist because VCs

congregate in certain locations, or that small high-tech businesses do the same. That is the nature of business and the commercial market place. Let other programs focus on those concerns. The SBIR Program should be allowed to focus on the development of the most innovative technological products that have a potential commercial market - wherever that market exists.

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